IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 105 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAMBHUBHAI NARSINHBHAI PATEL - Appellant(s)
Versus
MANAGING DIRECTOR,GUJARAT NARMADA VELLY FERTILIZER CO. & 2 - Defendant(s)

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Appearance :
MR MM SAIYED for Appellant(s) : 1,
MR NANDISH CHUDGAR for Respondents No. 1 and 2
None for Respondent no. 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/08/2006

ORAL JUDGMENT

1. Mr. M.M. Saiyed, learned counsel for the appellant and Mr. Nandish Chudgar, learned counsel for the respondents no. 1 and 2. None for respondent no.3 though Rule is served.
2. The present appeal is at the instance of the plaintiff who has suffered rejection under the hands of the two courts below.
3. The plaintiff filed a suit against the defendants for return of possession of the land which was acquired in favour of the respondent no.1. According to the plaintiff, the land, well described in the plaint belonged to the plaintiff, the land was proposed for acquisition, but under the settlement between the plaintiff and the defendants, so also with certain other persons, the present parcel of land and the land belonging to very many people were acquired and certain award was made. In Land Acquisition Case No. 12/77, decided on 20.10.77, a sum of Rs. 19,610/- was awarded in favour of the plaintiff; the plaintiff admits that he received the said money. It appears that after some time, certain persons whose lands

were acquired, started making applications to the State Government that as the land were kept barren, unutilized and unused, the said land be released and the government may withdraw from the acquisition. Accordingly, the government withdrew from the acquisition, land was released from the acquisition and possession was handed over in favour of such owners. The plaintiff also made certain representations to the State Government, which remained unattended and no orders for release of the land were made in favour of the plaintiff-erstwhile land owner, therefore, he filed the present suit. According to the plaintiff, he is being treated differently and step-motherly treatment is extended to him, because, in case of number of others, land was ordered to be released, but no such order is passed in favour of the plaintiff. It is also the submission that if the land is lying unused for long many years, then, that would be national loss and in any case, the government should withdraw from the acquisition and possession should be restored in favour of

the plaintiff. Accordingly, such decrees were prayed for. The defendants no. 1 and 2 submitted that the land was acquired by them for future plans relating to expansion and that the land was not lying unused, but was being used time and again or as and when such occasion arose. They denied the plaintiff's right and also contended that such civil suit is not maintainable and the suit is barred by limitation.

4. After casting the issues, the learned trial court granted appropriate opportunity to the parties to lead evidence, the parties accordingly led evidence. The learned trial court, after hearing the parties dismissed the suit, as the appeal proved futile, the plaintiff is before this Court.

5. The appeal has been admitted for hearing the parties on 26.7.2006 on the following substantial questions of law.

> "[1] Whether the suit of the plaintiff is barred by limitation especially when the

plaintiff was making representations to the authority for re-grant or re-allotment of the land which was earlier acquired and was not put to any use by the Government or the Company for whose use the property was acquired?

[2] Whether on the facts and in the circumstances of the case, the courts below were justified in holding that the suit of the plaintiff suffered fatal effect of mis-joinder and non-joinder of the parties especially when no opportunity was given to the plaintiff to make those persons as parties?

[3] Whether on the facts and in the circumstances of the case, the court below was justified in dismissing the suit even when certain orders were made in favour of the erstwhile land holders, whose lands were acquired and was not put to use and on application by such land holder, the land

was reallotted in favour of such holders?"

6. Shri Saiyed, learned counsel for the appellant-plaintiff submits that the State Government could not treat the plaintiff differently specially when application of other tenure holders, whose land were acquired, were allowed and the State Government had withdrawn from the acquisition and restored possession of the land in favour of such tenure holders. According to him, the suit was wrongly held to be barred by limitation and the plaintiff would be entitled to a decree in his favour. It is also submitted that the land could not be allowed to go waste and the plaintiff would be entitled to an order in his favour. He has placed strong reliance upon the judgment of the Supreme Court in the matter of **B.E.M.L. Employees H. B. Co-op.Socy. Ltd. Vs. State of Karnataka [AIR 2004 SC 5054].**

7. Mr. Nandish Chudgar, learned counsel for the respondents-defendants no.1 and 2 inter alia, submitted that on acquisition of the land, the

right of the erstwhile owner comes to an end and once he receives compensation without any demur on his part, then, that is always the end of the matter. According to him, not only the suit was barred by limitation, but the plaintiff had no civil right in his favour and the Civil Court would not be competent to issue any directions in case like present where, on negotiations, consent award was made.

8. The question relating to limitation would assume importance if it is firstly held that the plaintiff has some civil right and Civil Court is competent to issue a decree of the nature as prayed for by the plaintiff.

9. The Land Acquisition Act in itself is a complete Code. Whenever the State Government or the Union Government is of the opinion that a particular parcel of land would be needed for the public purpose or for a company, then, a notification would be issued under Section 4 of the Land Acquisition Act. Thereafter, an inquiry would be made under Section 5A if the urgency clause under Section 17A of the Act is not applied.

After disposal of the objections, a declaration would be made under section 6 of the Land Acquisition Act and after the declaration is made, the persons, who are now to be dispossessed would be required to submit their claims before the Land Acquisition Officer. The Land Acquisition Officer is required to make award within the period provided under the Act. Once a declaration under Section 6 is made and thereafter compensation amount is paid to the person who is dispossessed, then, the person who is dispossessed would lose all his rights, title and interest in the property. Undisputedly, the plaintiff, in the present case, received compensation money without any reservation or demur on his part. He started asserting his rights after learning that the government had withdrawn from the acquisition in case of some people and started making various representations to the State Government. Assuming that the submission of such representations and non-decision on the part of the government on this representations could

extend limitation in favour of the plaintiff, the question still would be that is the plaintiff entitled to a decree in his favour and whether a Civil Court can interfere in a matter relating to land acquisition, specially under Sections 4 and 6 of the Land Acquisition Act.

10. The Supreme Court has observed that in cases of such nature, the Civil Court would have no jurisdiction. In the matter of **Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and others [[1996] 6 Supreme Court Cases 405]**, the Supreme Court observed that if the land is acquired for a particular public purpose, then, the land can be used for any other public purpose. If the land is vested free from all encumbrances in favour of such person on whose behalf, the land was acquired, then restitution of surplus land cannot be ordered in favour of the erstwhile owner. The land would belong to the present owner and the erstwhile owner would have no right to claim back the land, because, at some point of time,

he had received compensation.

11. So far as the judgment in the matter of B.E.M.L. Employees [supra] is concerned, that was a case where land of number of the persons was proposed to be acquired, Land Acquisition Officer made recommendations in favour of number of the persons for release of the land, land of the petitioner was not released though the land of others was released and on this premise, the petitioner came to the Court submitting inter alia, that he was subjected to discrimination. On such facts, the Supreme Court observed that if the petitioner was similarly situated, he could not be treated differently. That case was on altogether different facts.

12. Taking into consideration the totality of the circumstances, it cannot be held that because land of few was returned back by the State Government, the plaintiff would also be entitled to decree in his favour for return of the land. In case like present, Civil Court would not be competent to grant a decree. The State alone would be competent authority to make orders.

13. Under the circumstances, even if I hold that the suit of the plaintiff is within the limitation, I am still obliged to hold that the decree prayed for by the plaintiff could not be granted by the court below even if the State had made certain orders in favour of certain persons who are similarly situated. The questions no. 1 to 3 would arise for decision if it is held that the Civil Court has jurisdiction to entertain a suit of present nature and as the question of jurisdiction is being decided against the interest of the plaintiff, the questions are not required to be answered.

14. The appeal is dismissed. No costs. Decree be framed accordingly.

[R.S. GARG, J.]

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